UNITED NATIONS

UNFCCC Framework Convention on Climate Change

Distr.
GENERAL

FCCC/CP/2002/2
12 June 2002

Original: ENGLISH

CONFERENCE OF THE PARTIES
Eighth session
New Delhi, 23 October – 1 November 2002

AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES UNDER ARTICLE 4 OF THE KYOTO PROTOCOL

Note by the secretariat

1. Article 4, paragraphs 1 and 2, of the Kyoto Protocol states:

> "1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B [illegible] in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.
>
> 2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement."

2. The European Community and its Member States, by a decision adopted on 25 April 2002, have agreed to fulfil their commitments under Article 3, paragraph 1, jointly in accordance with Article 4 of the Kyoto Protocol.

3. The quantified emission limitation and reduction commitments agreed by the European Community and its Members States for the purpose of determining the respective emission levels allocated to each of them for the first commitment period from 2008 to 2012 are set out in annex II to the decision. The European Community and its Member States deposited their instruments of ratification, approval or accession with the Depositary on 31 May 2002. On that same day Austria, Belgium, Denmark, the European Community, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland notified the secretariat of their decision to fulfil their commitments jointly in accordance with Article 4 of the Kyoto Protocol.

4. In accordance with Article 4, paragraph 2, of the Kyoto Protocol, the secretariat has prepared the present document to notify the Parties and signatories to the Convention of the terms of the agreement. In order to reduce paper consumption, the text of the Kyoto Protocol, which was reproduced in its entirety in the decision referred to in paragraph 2 above, has been omitted. Since the notifications are identical, only one document is being issued. The text of the Council Decision is reproduced as received by the secretariat, without formal editing.

Annex

COUNCIL DECISION
of
25 April 2002

concerning the approval, on behalf of the European Community,
of the Kyoto Protocol to the United Nations Framework Convention
on Climate Change
and the joint fulfilment of commitments thereunder

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) in conjunction with Article 300(2), first sentence of the first subparagraph, and Article 300(3), first subparagraph, thereof,

Having regard to the proposal from the Commission [1],

Having regard to the Opinion of the European Parliament [2],

Whereas:

1. The ultimate objective of the United Nations Framework Convention on Climate Change ("the Convention"), which was approved on behalf of the Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change [3], is to achieve stabilisation of greenhouse-gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.

2. The Conference of the Parties to the Convention, at its first session, concluded that the commitment by developed countries to aim at returning, individually or jointly, their emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol to the Convention for the Protection of the Ozone Layer to 1990 levels by the year 2000 was inadequate for achieving the Convention's long-term objective of preventing dangerous anthropogenic interference with the climate system. The Conference further agreed to begin a process to enable appropriate action to be taken for the period beyond 2000, through the adoption of a protocol or another legal instrument [4].

3. This process resulted in the adoption on 11 December 1997 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change ("the Protocol") [5].

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1 OJC
2 OJC
3 OJ L 33, 7.2.1994, p. 11.
4 Decision 1/CP.1: "The Berlin Mandate: Review of the adequacy of Article 4, paragraph 2(a) and (b), of the Convention, including proposals related to a protocol and decisions on follow-up".
5 Decision 1/CP.3: "Adoption of the Kyoto Protocol to the United Nations Framework Convention on Climate Change".

4. The Conference of the Parties to the Convention, at its fourth session, decided to adopt the Buenos Aires Plan of Action, to reach agreement on the implementation of key elements of the Protocol at the sixth session of the Conference of the Parties [6].

5. The core elements for the implementation of the Buenos Aires Plan of Action were agreed upon by consensus by the Conference of the Parties at its resumed sixth session in Bonn from 19 to 27 July 2001 [7].

6. A range of decisions giving effect to the Bonn Agreements were adopted by consensus by the Conference of the Parties at its seventh session in Marrakech from 29 October to 10 November 2001 [8].

7. The Protocol, under Article 24, is open for ratification, acceptance or approval by States and by regional economic integration organisations that have signed it.

8. The Protocol, under Article 4, provides for Parties to fulfil their commitments under Article 3 jointly, acting in the framework of and together with a regional economic integration organisation.

9. When the Protocol was signed in New York on 29 April 1998, the Community declared that it and its Member States would fulfil their respective commitments under Article 3(1) of the Protocol jointly in accordance with Article 4 thereof.

10. In deciding to fulfil their commitments jointly in accordance with article 4 of the Kyoto Protocol, the Community and the Member States are jointly responsible, under paragraph 6 of that article and in accordance with article 24(2) of the Protocol, for the fulfilment by the Community of its quantified emission reduction commitment under Article 3(1) of the Protocol. Consequently, and in accordance with Article 10 of the Treaty establishing the European Community, Member States individually and collectively have the obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from action taken by the institutions of the Community, including the Community's quantified emission reduction commitment under the Protocol, to facilitate the achievement of this commitment and to abstain from any measure that could jeopardise the attainment of this commitment.

11. The legal base of any further Decision in relation to the approval by the Community of future commitments in respect of emission reductions will be determined by the content and effect of that Decision.

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[6] Decision 1/CP.4: "The Buenos Aires Plan of Action".
[7] Decision 5/CP.6: "Implementation of the Buenos Aires Plan of Action".
[8] Decisions 2-24/CP.7: "The Marrakech Accords".

12. The Council agreed upon the contributions of each Member State to the overall Community reduction commitment in the Council conclusions of 16 June 1998 [9]. Certain Member States expressed assumptions concerning base year emissions and common and coordinated policies and measures. The contributions are differentiated to take account i.a. of expectations for economic growth, the energy mix and the industrial structure of the respective Member State. The Council further agreed that the terms of the agreement would be included in the Council Decision on the approval of the Protocol by the Community. Article 4(2) of the Protocol requires the Community and its Member States to notify the Secretariat, established by Article 8 of the Convention, of the terms of this agreement on the date of deposit of their instruments of ratification or approval. The Community and its Member States have an obligation to take measures in order to enable the Community to fulfil its obligations under the Protocol without prejudice to the responsibility of each Member State towards the Community and other Member States to fulfilling its own commitments.

13. The base-year emissions of the Community and its Member States will not be established definitively before the entry into force of the Protocol. Once these base-year emissions are definitively established and at the latest before the start of the commitment period, the Community and its Member States shall determine these emission levels in terms of tonnes of carbon dioxide equivalent in accordance with the procedure referred to in Article 8 of Council Decision 93/389/EEC of 24 June 1993 for a monitoring mechanism of Community CO2 and other greenhouse gas emissions [10].

14. The Gothenburg European Council on 15 and 16 June 2001 reaffirmed the determination of the Community and the Member States to meet their commitments under the Protocol, and stated that the Commission will prepare a proposal for ratification before the end of 2001 making it possible for the Community and its Member States to fulfil their commitment rapidly to ratify the Protocol.

15. The Laeken European Council on 14 and 15 December 2001 confirmed the Union's determination to honour its commitment under the Kyoto Protocol and its desire that the Protocol should come into force before the Johannesburg World Summit on Sustainable Development, 26 August to 4 September 2002.

16. The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [11],

HAS ADOPTED THIS DECISION:

Article 1

The Kyoto Protocol to the United Nations Framework Convention on Climate Change ("the Protocol") signed on 29 April 1998 in New York is hereby approved on behalf of the European Community.

The text of the Protocol is set out in Annex I.

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[9] Doc. 9702/98 of 19 June 1998 of the Council of the European Union reflecting the outcome of proceedings of the Environment Council of 16-17 June 1998, Annex I.

[10] OJ L 167, 9.7.1993, p. 31. Decision as last amended by Decision 99/296/EC (OJ L 117, 5.5.1999, p. 35).

[11] OJ L 184, 17.7.1999, p.23

Article 2

The European Community and its Member States shall fulfil their commitments under Article 3(1) of the Protocol jointly, in accordance with the provisions of Article 4 thereof, and with full regard to the provisions of Article 10 of the Treaty establishing the European Community.

The quantified emission limitation and reduction commitments agreed by the European Community and its Member States for the purpose of determining the respective emission levels allocated to each of them for the first quantified emission limitation and reduction commitment period, from 2008 to 2012, are set out in Annex II.

The European Community and its Member States shall take the necessary measures to comply with the emission levels set out in Annex II, as determined in accordance with Article 3 of this Decision.

Article 3

The Commission shall, at the latest by 31 December 2006 and in accordance with the procedure referred to in Article 4(2) of this Decision, determine the respective emission levels allocated to the European Community and to each Member State in terms of tonnes of carbon dioxide equivalent following the establishment of definitive base-year emission figures and on the basis of the quantified emission limitation or reduction commitments set out in Annex II, taking into account the methodologies for estimating anthropogenic emissions by sources and removals by sinks referred to in Article 5(2) of the Protocol and the modalities for the calculation of assigned amount pursuant to Article 3(7) and (8) of the Protocol.

The assigned amount of the European Community and of each Member State shall be equal to its respective emission level determined in accordance with this Article.

Article 4

1. The Commission shall be assisted by the committee instituted by Article 8 of Decision 93/389/EEC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 5

1. The President of the Council is hereby authorised to designate the person or persons empowered to notify, on behalf of the European Community, this Decision to the Secretariat of the United Nations Framework Convention on Climate Change in accordance with Article 4(2) of the Protocol.

2. The President of the Council is hereby authorised to designate the person or persons empowered to deposit, on the same date as the notification referred to in paragraph 1, the instrument of approval with the Secretary-General of the United Nations in accordance with Article 24(1) of the Protocol, in order to express the consent of the Community to be bound.

3. The President of the Council is hereby authorised to designate the person or persons empowered to deposit, on the same date as the notification referred to in paragraph 1, the declaration of competence set out in Annex III, according to the provisions of Article 24(3) of the Protocol.

Article 6

1. When depositing their instruments of ratification or approval of the Protocol, Member States shall notify, at the same time and on their own behalf, this Decision to the Secretariat of the United Nations Framework Convention on Climate Change in accordance with Article 4(2) of the Protocol.

2. Member States shall endeavour to take the necessary steps with a view to depositing their instruments of ratification or approval simultaneously with those of the European Community and the other Member States and as far as possible not later than 1 June 2002.

3. Member States shall inform the Commission not later than 1 April 2002 of their decisions to ratify or to approve the Protocol or, according to the circumstances, of the probable date of completion of the requisite procedures. The Commission shall, in cooperation with the Member States, arrange a date for depositing the instruments of ratification or approval simultaneously.

Article 7

This Decision is addressed to the Member States.

Done at Luxembourg, 25.04.2002

For the Council

The President

signed by:

M. Rajoy Brey

ANNEX I

[THE TEXT OF THE KYOTO PROTOCOL HAS BEEN OMITTED IN ORDER TO REDUCE PAPER CONSUMPTION]

ANNEX II

TABLE OF QUANTIFIED EMISSION LIMITATION OR REDUCTION COMMITMENTS FOR THE PURPOSE OF DETERMINING THE RESPECTIVE EMISSION LEVELS ALLOCATED TO THE EUROPEAN COMMUNITY AND ITS MEMBER STATES IN ACCORDANCE WITH ARTICLE 4 OF THE KYOTO PROTOCOL

	QUANTIFIED EMISSION REDUCTION COMMITMENT AS LAID DOWN IN ANNEX B OF THE KYOTO PROTOCOL (percentage of base year or period)
EUROPEAN COMMUNITY	92%
	QUANTIFIED EMISSION LIMITATION OR REDUCTION COMMITMENT AS AGREED IN ACCORDANCE WITH ARTICLE 4(1) OF THE KYOTO PROTOCOL (percentage of base year or period)
BELGIUM	92.5%
DENMARK	79%
GERMANY	79%
GREECE	125%
SPAIN	115%
FRANCE	100%
IRELAND	113%
ITALY	93.5%
LUXEMBOURG	72%
NETHERLANDS	94%
AUSTRIA	87%
PORTUGAL	127%
FINLAND	100%
SWEDEN	104%
UNITED KINGDOM	87.5%

ANNEX III

DECLARATION BY THE EUROPEAN COMMUNITY MADE IN ACCORDANCE WITH ARTICLE 24(3) OF THE KYOTO PROTOCOL

The following States are at present members of the European Community: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or world wide environmental problems.

The European Community declares that its quantified emission reduction commitment under the Protocol will be fulfilled through action by the Community and its Member States within the respective competence of each and that it has already adopted legal instruments, binding on its Member States, covering matters governed by the Protocol.

The European Community will on a regular basis provide information on relevant Community legal instruments within the framework of the supplementary information incorporated in its national communication submitted under Article 12 of the Convention for the purpose of demonstrating compliance with its commitments under the Protocol in accordance with Article 7(2) thereof and the guidelines thereunder.